

***United States Court of Appeals
for the Second Circuit***



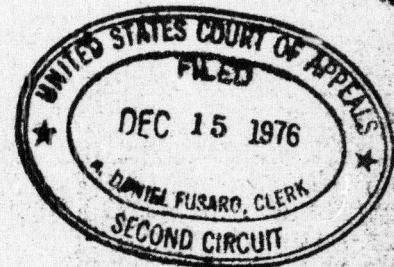
APPENDIX

76-5040

Original

Docket No. 76 - 5040
(76 B 2341)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



IN THE MATTER OF

23 E. 74 REALTY CORP.

Debtor-Appellant.

Bp/s

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

JESSEL ROTHMAN, P.C.
Attorney for Debtor-Appellant
170 Old Country Road
Mineola, New York
516 294-9449

PAGINATION AS IN ORIGINAL COPY

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NAME OF BANKRUPT/DEBTOR			DISC. NO.	DIV. NO.	DOCKET NO.
23 E. 74 REALTY CORP.			208		76 B 2341
ADDRESS OF BANKRUPT/DEBTOR (Number and Street)			CHAPTER OR SECTION		CHECK IF
23 E. 74th St.			CHAP. X		<input checked="" type="checkbox"/> Voluntary
			DATE PETITION FILED		<input type="checkbox"/> Involuntary
			10/19/76		<input type="checkbox"/> Partnership
			DATE CLOSED		<input checked="" type="checkbox"/> Corporation
					<input type="checkbox"/> Farmer
			DISCHARGE		<input type="checkbox"/> Employee
			Granted		<input type="checkbox"/> Professional
			Denial		<input type="checkbox"/> Other (Non-business)
			Waiver		<input type="checkbox"/> Merchant
			DATE DISCHARGED		<input type="checkbox"/> Manufacturer
					<input checked="" type="checkbox"/> Other (Business)
			PETITION DISMISSED?		CHAPTER UNDER WHICH CASE WAS PENDING WHEN DISMISSED
			<input type="checkbox"/> YES		
CITY			NAME OF DISTRICT JUDGE		
NEW YORK			RICHARD OWEN		
ZONE			NAME OF BANKRUPTCY JUDGE		
COUNTY					
NEW YORK					
STATE					
N.Y.					

ATTORNEY FOR BANKRUPT OR DEBTOR	NAMES AND ADDRESSES
	JESSEL ROTHMAN, P.C. 170 Old Country Rd. Mineola, N.Y. 11501 516-294-9449
ATTORNEY FOR PETITIONING CREDITORS	
RECEIVER	
ATTORNEY FOR RECEIVER	
TRUSTEE	
ATTORNEY FOR TRUSTEE	

CHANGES OF PRINCIPALS	
DATE	PROCEEDINGS
10/19/76	Filed Voluntary Petition under Chapter X, Affidavit of Kurt Resch, Referred to District Judge Owen.
10/20/76	Filed MEMO-ENDORSED on back of proposed order for a stay, refusing to grant the stay pursuant to Chapter X Sec 133 on the Bkcy Act. The automatic stay pursuant to Bkcy Rule 10/601 is hereby vacated. So ordered Gagliardi, J. dated 10/19/76. f.
10/26/76	Filed NOTICE OF APPEAL to USU Court of Appeals by 23 E. 74 Realty Corp. from the order of Gagliardi, J. dated 10/20/76. f. m/n Shea Gould Climenko Kramer & Casey, 330 Madison Ave. N.Y.

BEST COPY AVAILABLE

FORM BK 74
CCT. 1973

BANKRUPTCY DOCKET

A-1

XXXXX CHECK THIS BOX IF FILING FEES WERE PAID IN FULL AT THE TIME OF FILING

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JUDGE OWEN

----- x
In re

23 E. 74 REALTY CORP.,

Debtor.

Bankruptcy No.

763712341

----- x
VOLUNTARY PETITION UNDER CHAPTER X

1. Petitioner's post office address is 23 E. 74th Street, New York, New York.
2. Petitioner is a corporation organized and existing under the laws of the State of New York and is qualified to file this petition and is entitled to the benefits of Chapter X of the Bankruptcy Act.
3. Petitioner has had its principal place of business within this district for the preceding 6 months.
4. Petitioner is unable to pay its debts as they mature.
5. The nature of petitioner's business is owner and operator of the sixteen (16) storey building located at 23 E. 74th Street, New York, N. Y.
6. The indebtedness of petitioner, liquidated as to amount and not contingent as to liability is \$250,000 or over.
7. The assets, liabilities and capital stock of petitioner are substantially set forth in the most recent financial statement annexed hereto.
 - (a) Assets - Said statements reveal gross income of

\$600,000. with a net after payment of all expenses except debt service and interest of \$325,000. per annum.

(b) Liabilities - The principal liabilities of petitioner consist of a judgment of foreclosure dated July 21, 1976, in the amount of \$2,919,687.49; plus unpaid real estate taxes in the approximate amount of \$130,512 plus interest and penalties; and unsecured loans to Franklin National Bank in the amount of \$300,000 and to Chemical Bank of \$50,000.

(c) Capital Stock. The authorized, issued and outstanding capital stock of petitioner is as follows:

Authorized: 200 shares NPV

All issued and outstanding shares are owned by Kurt Resch.

(d) There are presently pending two mortgage applications, one with the FHA and one with the Kosta Group, approval of either of said mortgage applications will be sufficient to pay the judgment herein.

8. There are no proceedings pending affecting the property of petitioner, except the judgment of foreclosure, Supreme Court, New York County, dated July 21, 1976 and a mechanic's lien filed by A. Fuchs Masonary Corp.

9. No plan of reorganization, readjustment or liquidation affecting the property of petitioner is pending, either in connection with or without any judicial proceeding, no other petition by or

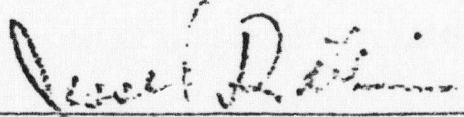
against petitioner is pending under Chapter X of the Act; nor is any other bankruptcy case, initiated by a petition by or against petitioner now pending.

10. The specific facts showing the need for relief under Chapter X of the Act are as follows:

Because of the fact that the only asset herein for creditors is the security of the real property and the 16 storey building contained therein, it is respectfully submitted that the relief under Chapter X which would bind the secured creditors is the only remedy since Chapter XI may only affect unsecured debts and may deal neither with secured debts nor capital structure on a corporation, thus Chapter X is the sole remedy available.

11. The debtor in possession will file a list of creditors pursuant to Rule 10-108 and a plan will be submitted forthwith upon approval of the petition.

WHEREFORE petitioner prays for relief in accordance with Chapter X of the Act.



Jesse Rothman, P. C.
170 Old Country Road
Mineola, New York 11501

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

23 E. 74 REALTY CORP.,

Debtor

IN PROCEEDINGS FOR
CORPORATE REORGANIZATION
UNDER CHAPTER X

BANKRUPTCY NO.

This matter being opened to the Court by JESSEL ROTHMAN, P.C.
attorney for the debtor, and upon the petition of the debtor, where
it appears to this Court that pending approval of the petition filed
herein that a stay be granted pursuant to Chapter X Section 113 of the
Bankruptcy Act of the sale of the premises more commonly known as
23 East 74th Street, New York, N.Y., pursuant to an order and judgment
of foreclosure of the Supreme Court, County of New York, dated July 21,
1976, in the amount of \$2,919,687.49, it is

ORDERED that the sale of the premises 23 East 74th Street, New
York, N.Y., pursuant to the judgment of the Supreme Court, New York
County, is stayed; and it is further

ORDERED that this stay remain in force and effect until the
case is closed, dismissed or converted into bankruptcy or the property
subject to the lien is, with the approval of this Court, abandoned
or transferred, and it is

FURTHER ORDERED, that 23 E. 74 Realty Corp., the Corporation,
remain as debtor in possession pending approval of the petition pursuant
to 10-113 Bankruptcy Rules.

Dated: New York, New York
October 19, 1976

U. S. D. J.

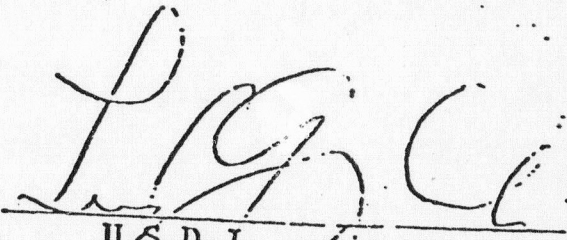
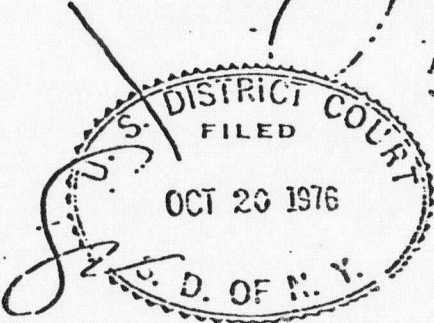
Endorsement

In re 23 E. 74 Realty Corp., 76 Bkcy. 2341

No good cause having been shown, this court in the exercise of its discretion refuses to grant the stay pursuant to Chapter X Section 113 of the Bankruptcy Act, 11 U.S.C. §513. The automatic stay pursuant to Bankruptcy Rule 10-601 is hereby vacated.

So ordered.

Dated: Oct. 19, 1976
New York, N.Y.


U.S.D.J.


MICROFILM
OCT 20 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In the Matter of

Bankruptcy No.
76BKCY2341

23 E. 74 REALTY CORP.,

Debtor,

NOTICE OF APPEAL
----- x

NOTICE is hereby given that 23 E. 74 REALTY CORP., the debtor above named, hereby appeals to the U. S. Court of Appeals for the Second Circuit from the order of the Hon. Lee P. Gagliardi, dated October 20, 1976, which order denied the debtor's motion pursuant to Chapter 10-113 of the Bankruptcy Act for a stay pending approval of the petition filed simultaneously therewith and which order vacated the stay created pursuant to Rule 601 of the Bankruptcy Rules.

Dated: Mineola, New York
October 26, 1976

JESSEL ROTHMAN, P.C.
Attorney for Debtor
Office & P. O. Address
170 Old Country Road
Mineola, New York 11501
(516) 294 9449

TO: Clerk of the U. S. District Court
Foley Square
New York, N. Y. 10007

Shea, Gould, Climenko, Kramer & Casey, Esqs.
330 Madison Avenue
New York, New York

STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:

JANE BORSZEM, being duly sworn, deposes and says:

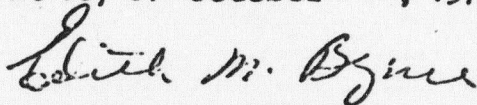
That deponent is not a party to the action, is over the 18 years of age and resides at Mineola, New York.

That on the 26 day of October, 1976, deponent served the within Notice of Appeal upon Shea, Gould, Climenko, Kramer & Casey, Esqs. attorneys for Amfac Mortgage Corp.

in this action, at 330 Madison Avenue, New York, N.Y. the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in - a post office - official depository under the exclusive care and custody of the United States post office department within New York State.


JANE BORSZEM

Sworn to before me this
26 day of October, 1976



EDITH M. BYRNE
NOTARY PUBLIC, STATE OF NEW YORK
No. 300 16320
Qualified in Nassau County
Commission Expires March 20, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In re

23 E. 74 REALTY CORP.,

Debtor.

-----x

TO THE HONORABLE JUDGE OF THIS COURT:

The petition of the debtor herein, respectfully shows and alleges:

1. The petitioner simultaneously filed herein a petition for reorganization under Chapter X of the Bankruptcy Act with this Court.

2. The debtor is engaged in the ownership and operation of real property known as 23 E. 74th Street, New York, N.Y., a 16 storey multiple dwelling which now consists of 83 apartments and commercial property operating under the trade name Volney Hotel.

3. In January 1974, the debtor herein borrowed an acquisition and construction loan from Amfac Mortgage Corporation in the total consolidated amount of \$2,500,000, which mortgage became due and owing on September 11, 1975.

4. With said proceeds and the proceeds of a loan from the Franklin National Bank in the sum of \$300,000, the 16 storey building was converted into an 83 apartment, modern multiple dwelling with commercial space. The premises are completely rented except for one apartment and has a gross rent roll of

approximately \$600,000, with a net prior to the payment of debt service and interest, of \$325,000.

5. The indebtedness to Amfac Mortgage Corporation was secured by a first mortgage on the real property and a security agreement as to the furnishing and fixtures. When payment was not made September 11, 1975 of the principal sum of \$2,500,000, an action in foreclosure was commenced on October 16, 1975.

6. In the interim because of the then tightness of the mortgage market, the petitioner was unable to get a mortgage commitment to refinance the \$2,500,000.

7. On July 21, 1976, a judgment of foreclosure and sale was entered, Supreme Court, New York County, the sale to take place on October 20, 1976 at 10 A.M. in the principal amount of \$2,919,687.49 plus interest, costs and allowances, fees and expenses of the sale. (Exhibit A.)

8. The approximate amount of unpaid real estate taxes is in the amount of \$131,512.

9. A foreclosure by the Amfac Mortgage Corporation would in fact wipe out the indebtedness owed Franklin National Bank and Chemical Bank of \$350,000 and also wipe out all mechanic's liens, if any.

10. In fact as appears from the financial statement and

pro formas annexed hereto, the operation of the apartment dwelling as a business is successful and that the apartment dwelling is returning a gross income of \$600,000 with a net after payment of all expenses except debt service and interest, of \$325,000 per annum.

11. There is presently pending an application for an FHA commitment in the amount of \$2,850,000 for which a commitment fee of \$6,000 has been delivered to the FHA. There is also pending an application with Kosta Group for a permanent mortgage in the amount of \$3,200,000. The approval of either one of these commitments by the lending institutions, which approvals are imminent, would provide sufficient funds to repay both the secured and unsecured creditors.

12. When this acquisition was first acquired in 1974, the petitioner was dealing with a vacant building in a declining market. Through the petitioner's efforts, a completely remodernized a revamped and refurbished apartment building was created at a total cost of in excess of \$3,000,000.

13. Although the Amfac Mortgage Corporation and the debtor have been jointly signing checks to insure payment of day to day creditors, and the balance of all proceeds then being applied against the mortgage indebtedness to the detriment of

A-121

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

KURT RESCH being duly sworn, deposes and says that
he is the President of the
the corporation named in the within entitled action; that he
has read the foregoing Petition
and knows the contents thereof, and that the same is true to h
own knowledge, except as to the matters herein stated to be alleged
upon information and belief, and as to those matters he
believes it to be true.

Deponent further says that the reasons this verification
is made by deponent and not by the petitioner
is because the said petitioner
is a domestic corporation, and deponent an officer
thereof, to wit its President.

Sworn to before me this
18 day of October 19 76

(5)

4'

Kurt Resch

RECEIVED
NEW YORK
OCT 18 1976

71.

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- - - - - x

AMFAC MORTGAGE CORPORATION, :

Plaintiff, :

- against - :

NOTICE OF SALE

23 E. 74 REALTY CORP., KURT RESCH, :

A FUCHS MASONARY CORP., EDWIN S. :

BEINECKE, JR., NICHOLAS A. NICHOLAS, :

HARRINGTON GAINES, LTD., :

Defendants. :

- - - - - x

Index No. 18026/75

In pursuance of a judgment of foreclosure and sale duly made and entered in the above-entitled action on the 21st day of July, 1976, I, the undersigned Referee in said judgment named will sell at public auction, in the Rotunda of the County Courthouse, 60 Centre Street, New York, New York on the 20th day of October, 1976, at 10:00 A.M. in the forenoon of that day, by auctioneer, the premises directed by said judgment to be sold and described therein as follows:

All that certain lot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 74 Street distant 50 feet westerly from the northwesterly corner of 74 Street and Madison Avenue;

EXHIBIT A

THENCE northerly parallel with Madison Avenue and partly through the center of a party wall 102 feet 2 inches to the center line of the block between 74 and 75 Streets;

THENCE westerly along said center line of the block 70 feet;

THENCE southerly parallel with Madison Avenue 102 feet 2 inches to the northerly side of 74 Street;

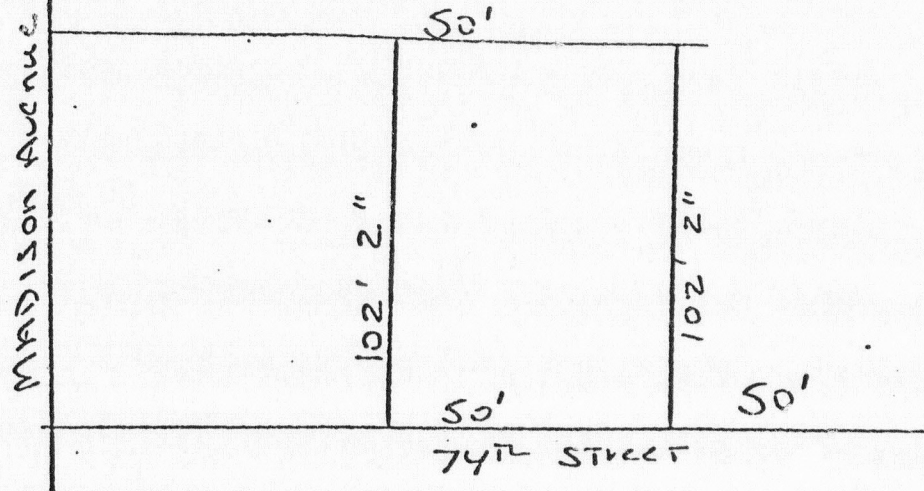
THENCE easterly along the said northerly side of 74 Street 70 feet to the point or place of BEGINNING.

Said premises being known as and by 23 East 74th Street, City, County and State of New York.

Said premises will be sold subject to the provisions of judgment, Index No. 18026/75; subject to any state of facts which an accurate survey might reveal; subject to covenants, easements, rights of way and restrictions of record, if any, which are prior to the lien of plaintiff's mortgage, and subject to any authorization of law, ordinances or orders issued by any state or municipal department having jurisdiction affecting said premises.

The following is a diagram of the property to be sold, known as 23 East 74th Street:

EXHIBIT A



Approximate amount due plaintiff as per judgment:
\$2,919,687.49 plus interest, costs and allowances, fees and
expenses of sale. Upon information and belief, the approximate
amount of unpaid real estate taxes as of the date of sale is
\$130,512.00 plus interest and penalties, if any.

Dated: New York, New York
September 20, 1976

SHEA GOULD CLIMENKO & CASEY
Attorneys for Plaintiff
330 Madison Avenue
New York, New York 10017
(212) 661-3200

TO: STANLEY KRAVET
Attorney for Defendants
23 E. 74 Realty Corp.
Kurt Resch
280 Broadway
New York, New York 10007

HUBER MAGILL LAWRENCE & FARRELL
Attorneys for Defendant
Nicholas A. Nicholas
99 Park Avenue
New York, New York 10016

HYMAN SHEFSKY
Attorney for Defendant
A. Fuchs Masonary Corp.
250 West 57th Street
New York, New York 10019

THE VOLNEY

TWENTY-THREE EAST 74TH STREET

NEW YORK, N. Y. 10021

INCOME:

\$632,904.

VACANCY: @ 5%

\$ 31,800.

\$601,104./yr.EXPENSES:

Taxes - \$1,300,000. @ 8.7

\$113,100.

Water & Sewer

5,000.

Payroll

72,360.

Payroll Taxes & Fringe Benefits

10,272.

Insurance

6,500.

Fuel Oil - #6

24,260.

Electric - Public Halls & Elevator

10,000.

Exterminator

1,000.

Elevator Maintenance Contract

1,800.

Uniforms & Supplies

2,500.

Repairs, Replacements & Misc.

7,214.

Management

12,500.

TOTAL OPERATING EXPENSES

\$266,506./yr.INCOME:

\$601,104.

EXPENSES:

\$266,506.AVAILABLE INCOME FOR DEBT SERVICE:

\$334,598.LOOKING FOR 1ST MORTGAGE:

\$2,900,000. @ 9% Constant

\$261,000.

NET CASH FLOW:

\$ 73,598./yr.

RENTS DUE ON FIRST OF EACH MONTH

<u>APT. #</u>	<u>OCCUPANT</u>	<u>MONTHLY RENT</u>	<u>APT. #</u>	<u>OCCUPANT</u>	<u>MONTHLY RENT</u>
1A	Davison - Ferrer	\$1,700	6A	Maulsby	\$ 575
1A	Beinecke	575	6B	Hetkin	550
1B	Adams Rib	1,400	6C	Meserau	475
2A	Catala Products	1,100	6D	Weisberg	475
2A	Catala Products		6E	Saidenberg	550
2C	Goudy	200	6F	Lynch	500
2D-E	Rina	800	6G	Hagan	525
2F	Ward	450	7A		
2G	Aronson	250	7B	Shaley	650
2H			7C	Morse	400
3A	Drew	750	7D	Field	575
3B	Levine	325	7E	King	575
3D	Johnston	300	7F	Brooks	500
3E	Delynn	450	7G	Weiss	550
3F	Fekete	550	8A-8B		
3G	Meier	475	8C	Dietrich	375
4A	Skam	550	8D	Levin	750
4B	Watt	600	8E	Missett	500
4C	Brophy	375	8F	Sager	575
4D	Emmert	500	8G	Makins	550
4E	Langlois	425	9A	Gale	575
4F	J. W. Service Corp.	525	9B	Gallucci	550
4G	Towsend	475	9C	Mitchell	350
5A	Blanco	800	9D	Smith	525
5B-C	U. Schmidt	425	9E	Horowitz	550
5D	Sokolov	457	9F-G	Knapp	1,100
5E			10A	Clark	550
5F	Hogen	575	10B	McCauley	550
5G	Corhart	500	10C	Rozanski	325

EXHIBIT C

A-18

RENTS DUE ON FIRST OF EACH MONTH (Cont'd.)

<u>APT. #</u>	<u>OCCUPANT</u>	<u>MONTHLY RENT</u>	<u>APT. #</u>	<u>OCCUPANT</u>	<u>MONTHLY RENT</u>
10D	Huberman	\$ 550			
10E	Chammah	525			
10F-G	Clyde	1,100			
11A	Degroot	750			
11B)	Kaye	575			
11C)					
11D	Musso	575			
11E	Bissinger	575			
11F	Despecker	650			
11G	Cugat	575			
12A	Neufville	575			
12B	Barash	575			
12C	Dweck	375			
12D	Kolb	575			
12E	Maulsby	550			
12F	Nicholls	550			
12G	Weibaur	535			
14A	McCullen	550			
14B-C	Hook	750			
14D	Smullyen	650			
14F	Office	600			
14G	Friedman	500			
15A	Moore	1,100			
15B-C	Harris	600			
15D	Kuhn	750			
15F-G	Kaller-Kimche	900			
16A-H	Schule-Marshall	1,100			
16B	Pagnacota	700			
16G	Molinary	525			
P.H.	Kittay	1,400			

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

IN RE

CASE NO. 76 B 2341

23 E. 74 REALTY CORP.,

JUDGE OWEN

Debtor

CLERK'S CERTIFICATE

-----x

I, RAYMOND F. BURGHARDT, Clerk of the District Court
of the United States for the Southern District of New York, do
hereby certify that the certified copy of docket entries lettered
A-_____, and the original filed papers numbered 1 thru 4,
~~XXXXXXXXXXXX~~_____, inclusive, constitute
the record on appeal in the above entitled proceeding; except
for the following missing documents:

DATE FILED
None

PROCEEDINGS

IN TESTIMONY WHEREOF, I have caused the seal of the
said Court to be hereunto affixed, at the City of New York,
in the Southern District of New York, this 26th day of November,
in the year of our Lord, One thousand nine hundred and seventy
Six, and of the Independence of the United States the 201st year.

/s/ Raymond F. Burghardt
Clerk of the Court

I HEREBY ACKNOWLEDGE RECEIPT
OF THE CERTIFIED COPY OF DOCTRINE
PHIRIES, INDEX AND 1
VOLUMES OF ORIGINAL RECORDS.

DATE: 11-26-76 CP
A. DANIEL FUSARO
CLERK, U.S.C.A. 2nd Cir.

BEST COPY AVAILABLE

STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:

JANE BORSZEM, being duly sworn, deposes and says:

That deponent is not a party to the action, is over the 18 years of age and resides at Mineola, New York.


That on the 14th day of December , 1976 , deponent served the within Appendix

upon Shea, Gould, Climenko, Kramer & Casey, Esqs.

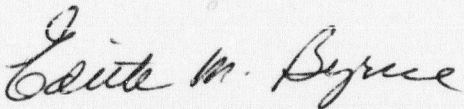
attorneys for Amfac Mortgage Corp.

in this action, at 330 Madison Avenue, New York, New York

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in - a post office - official depository under the exclusive care and custody of the United States post office department within New York State.


JANE BORSZEM

Sworn to before me this 14th
day of December , 1976



EDITH M. BYRNE
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-5560320
Qualified in Nassau County
Commission Expires March 30, 1978